

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Gregg Vigliotti,

Plaintiff,

- against -

Lebhar-Friedman, Inc.

Defendant.

Docket No. 18-cv-6798

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Gregg Vigliotti (“Gregg” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Lebhar-Friedman, Inc (“Lebhar-Friedman” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photographs of the “Birchbox” store, owned and registered by Gregg, a New York based professional photographer (the “Photographs”). Accordingly, Gregg seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

5. Gregg is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 700 East 134 Street Apt 4A, Bronx, NY 10454.

6. Upon information and belief, Lebhar-Friedman is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 150 West 30th Street 19th FL, New York, NY 10001. Upon information and belief Lebhar-Friedman is registered with the NYS Department of State Division of Corporations to do business in the State of New York.

7. At all times material, hereto, Lebhar-Friedman has owned and operated the website at the URLs: [www.drugstorenews.com](http://www.drugstorenews.com) and <https://www.chainstoreage.com> (the “Websites”).

## **STATEMENT OF FACTS**

### **A. Background and Plaintiff’s Ownership of the Photograph**

8. Gregg photographed the Birchbox store, as the subject of the Photographs. A true and correct copy of the Photographs is attached hereto as Exhibit A.

9. The Photographs are registered to Gregg as the copyright owner, under Copyright Registration No. VA 2-102-988, effective May 2, 2018. See Ex. B.

10. Gregg is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

### **B. Defendant’s Infringing Activities**

11. On or about August 6, 2014, Lebhar-Friedman ran articles on the Websites. See URL <https://www.drugstorenews.com/slideshow/birchbox-goes-clicks-bricks/> and

<https://www.chainstoreage.com/gallery-slider/birchbox/> (the “Articles”). The Articles prominently featured the Photographs. True and correct screenshots of the Articles featuring the Photographs are attached hereto as Exhibit C.

12. Lebhar-Friedman did not license the Photograph from Plaintiff for its article, nor did Lebhar-Friedman have Plaintiff’s permission or consent to publish the Photograph on its Website.

**FIRST CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

14. Lebhar-Friedman infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Lebhar-Friedman is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff’s rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff’s copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant’s profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Lebhar-Friedman be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
July 27, 2018

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